IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 8980 of 2006(R)

PETITIONER:

C.B.PADMAKUMAR, FLAT NO.101,
VAIDYA APPARTMENTS, ASHRAMAM ROAD,
CHINNAKKADA, KOLLAM-691 001.

BY ADV. SRI.P.BALACHANDRAN (SR.)
SRI.BIJU BALAKRISHNAN

RESPONDENTS:

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1. THE STATE OF KERALA, REP. BY THE
SECRETARY, HEALTH & FAMILY WELFARE DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2. THE CENTRAL PURCHASE COMMITTEE,
DIRECTORATE OF HEALTH SERVICES,
THIRUVANANTHAPURAM-37, REP. BY ITS CHAIR PERSON.

3. THE SECRETARY, REVENUE DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

*4. THE SECRETARY (TAXES), GOVERNMENT OF KERALA,
SECRETARIAT, TRIVANDRUM.
(*IMPLEADED AS ADDITIONAL 4TH RESPONDENT AS PER ORDER DATED 25/07/2006 IN THE WP(C).)

BY ADV. SHRI.MOHAMMED RAFFIQ, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/06/2007, ALONG WITH WPC NO. 21404 OF 2006, WPC NO. 21705 OF 2006, WPC NO. 21732 OF 2006, WPC NO. 21733 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE LETTER APPOINTING THE PETITIONER AS THE LIAISON AGENT BY M/S. FUTURA SURGICARE P. LTD., BANGALORE.

P2 : COPY OF THE LETTER APPOINTING THE PETITIONER AS THE LIAISON AGENT BY M/S. ADROIT PHARMACEUTICALS PVT.LTD., NAGPUR.

P3 : COPY OF THE LETTER APPOINTING THE PETITIONER AS THE LIAISON AGENT BY M/S. CENTURION LABORATORIES BARODA.

P4 : COPY OF THE LETTER APPOINTING THE PETITIONER AS THE LIAISON AGENT BY M/S. SPAN DIAGNOSTICS, SURAT.

P5 : COPY OF THE LETTER APPOINTING THE PETITIONER AS THE LIAISON AGENT BY M/S. PILCO PHARMA PVT. LTD., KANPUR.

P6 : COPY OF THE CIRCULAR NO.MSP 2/80294/05/DHS/(CPC) DATED 23/11/2005 ISSUED BY THE 2ND RESPONDENT.

P7 : COPY OF THE NOTIFICATION DATED 16/09/2005 OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE).

P8 : COPY OF THE REPRESENTATION DATED 20/03/2006 FILED BY THE PETITIONER AND 2 OTHERS BEFORE THE 2ND RESPONDENT.

P9 : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER AND 2 OTHERS BEFORE THE 1ST RESPONDENT.

P9(a) : COPIES OF PURCHASE AGREEMENTS OF FUTURA SURGICARE PVT.LTD. AND ADROIT PHARMACEUTICALS PVT.LTD. SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2005-06.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 8980, 21404, 21705, 21732 & 21733 of 2006

Dated, this the 7th day of June, 2007

J U D G M E N T

These connected cases are filed by drug suppliers to the Kerala Government. Supplies were made against purchase orders issued by the Central Purchase Committee. Senior counsel appearing for the petitioners contended that petitioners have been supplying for long and respondents issued Form D for such purchases until Ext.P6 was issued on 23/11/2005 prohibiting issue of Form D by the purchasing officers. The supplies admittedly made interstate sales from outside Kerala to Government of Kerala. Sec. 6 of the CST Act provides for concessional rate of tax on interstate sales only against Form 'C' or 'D', which will be issued by the purchaser against the bill. Even though purchase orders issued are not produced in this Court, petitioner in WP(C) No. 8980/06 has produced Ext.P9 along with reply affidavit. It is provided in Clause (1) that CST 4% is included in the price against which Form D to be provided by the buyers. This obviously means that the price offered is binding only if Form D is issued. In other words, if the purchasers refuse to issue Form D, they have to offer differential

tax or otherwise supplier is free to back out of the contract. Since the Department has not raised anything against this Clause in the supply / purchase order by the supplier, the respondent is bound to give Form D or should give differential tax with interest. Learned Government Pleader submitted that Government vide Ext.P6, prohibited issue of Form D only because price is inclusive of tax. I do not think charging of price inclusive of tax is a justification for denying Form D. If tax is included in the price, consequences is that the supplier will have to pay tax on tax element also. However, so long as concessional rate is available only against furnishing of declaration, such declaration is mandatory for claiming concessional rate of tax. Since price quoted is inclusive of only concessional rate of tax, respondents are bound to issue declaration. Moreover, when contract stands for an year, respondents cannot backward from the terms of the contract in the middle of the year. In the circumstances, WP(C)s are disposed of directing respondents to verify each and every purchase order and wherever provisions are provided that concessional rate of 4% of tax is laid against Form D, respondents are directed to issue Form D. Respondents are directed to carry out the above direction

within one month from the date of production of a copy of this judgment.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg